

Rochester Tel Center
180 South Clinton Avenue
Rochester, New York 14646-0700

716-777-6801

Jeffrey C. Parnell
Corporate Attorney



DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY FEDERAL EXPRESS

January 22, 1993

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RECEIVED

JAN 25 1993

FCC - BUREAU

RE: **FCC Docket No. 92-265 - In the Matter of
Implementation of Sections 12 and 19 of the Cable
Television Consumer Protection and Competition Act of
1992 -- Development of Competition and Diversity in
Video Programming Distribution and Carriage**

Dear Ms. Searcy:

Enclosed for filing please find one (1) original and nine (9) copies of the Comments of Rochester Telephone Corporation in the above-referenced proceeding.

To acknowledge receipt, please date-stamp the enclosed copy of this letter and return it to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Jeffrey C. Parnell
Attorney

JCP:klm
(3012Z)

Enclosures

No. of Copies rec'd
List A B C D E

019

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL
RECEIVED

JAN 25 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)

Implementation of Sections 12 and 19)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)
)

MM Docket No. 92-265

RECEIVED

JAN 25 1993

FEDERAL COMMUNICATIONS COMMISSION

COMMENTS OF ROCHESTER TELEPHONE CORPORATION

JOSEPHINE S. TRUBEK, ESQ.
General Counsel

ROCHESTER TELEPHONE CORPORATION
180 South Clinton Avenue
Rochester, New York 14646-0700

Jeffrey C. Parnell, Esq.
Of Counsel

DATE: January 22, 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

JAN 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 12 and 19)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

MM Docket No. 92-265

COMMENTS OF ROCHESTER TELEPHONE CORPORATION

Introduction and Summary

Rochester Telephone Corporation ("Rochester") submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released December 24, 1992 in this proceeding. In the NPRM, the Commission requests comments on implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. (1992) (the "1992 Cable Act").

Rochester has a strong interest in promoting competition and diversity in access to programming. One Rochester subsidiary, New Richmond Cable Company, has already acquired a license to offer Direct Broadcast Satellite ("DBS") television. Rochester is currently exploring expanding its ability to offer both DBS and, pursuant to the Commission's

Video Dialtone Order^{1/}, CATV services.

Rochester and other exchange carriers as well as some smaller cable service providers require widespread access, directly or indirectly, to cable programmers in order to compete effectively with large vertically integrated CATV providers. Without such access, the Commission's Video Dialtone Order will be meaningless. In implementing Sections 12 and 19 of the 1992 Cable Act (Sections 616 and 628 of the Communications Act, respectively), therefore, the Commission should construe those Sections so as to promote the greatest possible competition and access to programming services.

Discussion

In adopting its Video Dialtone Order, the Commission sought to advance its "overarching goals of creating opportunities to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public." 7 FCC Rcd at 5783. With effective implementation, Sections 616 and 628 can enhance those goals. The Commission should utilize each opportunity to interpret these Sections as broadly as possible.

^{1/} In the Matter of Telephone Company - Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Dkt. No. 87-266, Second Report and Order, 7 FCC Rcd 5781 (1992).

For example, the Commission seeks comment on whether Section 628 covers conduct beyond actions related to discriminatory incentives caused by vertical integration. NPRM at 5. The answer is clearly yes. While subsection 628(c) specifically refers to vertically integrated cable operators, that subsection is entitled "Minimum Contents of Regulations." The prohibition contained in subsection 628(b) is written far more broadly and, on its face, is applicable to any "cable operator" and any DBS programming vendor, regardless of vertical integration. Unfair practices are not solely the result of vertical integration. As the Commission recognizes, programmers may favor certain customers who are larger or more established, to the detriment of other customers. See NPRM at 6. The Commission, therefore, should use its authority to prevent the unfair practices of all such entities and not unnecessarily restrict application of Subsection 628(b) to vertical affiliation.

The Commission should take a similarly broad approach to determining what conduct violates Subsection 628(b). The Commission states that the plain language of Subsection 628(b) implicates only conduct that both (i) is unfair, deceptive or discriminatory, and (ii) could hinder the provision of satellite programming to consumers. Because this Subsection contains this two-step analysis, there is no reason to further restrict its application by narrowly defining its terms. These

terms must be defined as broadly as possible if the goals of the 1992 Cable Act, as well as those of the Video Dialtone Order are to be achieved.

Another reason for the Commission to construe Section 628 broadly is that Congress has already exempted from that Section contracts entered into on or before June 1, 1990. As the Commission itself recognizes, long-term contracts can be anti-competitive and restrict the effectiveness of the 1992 Cable Act. Pursuant to the Video Dialtone Order, exchange carriers will play an increasingly active role in the provision of CATV services, thereby increasing competition and the availability and diversity of services to customers. However, this role could be limited due to existing exclusive contracts between programmers and other providers. No further limitation on exchange carriers' entry into this business should be imposed. The Commission should therefore construe this exemption as narrowly as the Act permits. Thus, the Commission should examine carefully -- and permit public inspection of and comment upon -- the terms and conditions upon which programming is made available to both affiliated and unaffiliated distributors. To do otherwise would place new service providers at a competitive disadvantage that Congress sought to cure by enacting the 1992 Cable Act.

Conclusion

For the foregoing reasons, the Commission should construe the 1992 Cable Act as broadly as possible (and the exemptions thereto as narrowly as possible) in order to promote competition and diversity in the provision of CATV and DBS services.

Respectfully submitted,

Josephine S. Trubek /s/ J
JOSEPHINE S. TRUBEK, ESQ.
General Counsel

ROCHESTER TELEPHONE CORPORATION
180 South Clinton Avenue
Rochester, New York 14646-0700
(716) 777-6713

Jeffrey C. Parnell, Esq.
Of Counsel

DATE: January 22, 1993

(30122)